

Final Regulatory Flexibility Analysis

I. Identify and discuss why the rule includes or fails to include any of the following methods for reducing the impact on small business.

A. Less stringent compliance or reporting requirements.

The reporting requirements are minimal and determined by federal regulations for a construction site and for industrial certification of “no exposure”. These cannot be made less stringent. A site is determined to be in compliance with the standards if the permittee implements the erosion and storm water management plans. This is true for the current ch. NR 216, Wis. Adm. Code and is not being changed by the proposed rule.

B. Less stringent schedules or deadlines for compliance or reporting requirements.

The deadlines for compliance are submittal of a notice of intent 14 working days before commencement of land disturbance or 14 working days before beginning industrial activity. At that time, the developer must know how they are going to control erosion and manage future storm water. This is already a very short time frame for the Department to check that adequate control will be provided. It would be unmanageable to make it be any shorter. Small businesses that in the past disturbed more than 5 acres for the construction of their building were subject to this same schedule.

C. Consolidation or simplification of compliance or reporting requirements.

Because of an existing agreement between the Department of Commerce and the Department, certain small business owners will apply for coverage to Commerce when building plans are submitted and this will be deemed to be compliance with notification requirements of ch. NR 216, Wis. Adm. Code. This prevents dual permitting. In addition, Commerce does not charge an application fee while DNR does.

D. The establishment of performance standards in lieu of design or operational standards.

The standards as they are currently written are performance standards. This allows the landowner the flexibility to find the most cost-effective means available to meet the standard. The Department does not dictate how compliance is to be achieved. However, the Department does provide guidance and technical standards to assist the developer.

E. The exemption from any or all requirements of the rule.

With the addition of the industrial “no exposure” option, a small business can essentially be exempt from the requirements of the industrial permit requirements of subch. II of ch. NR 216. If they conduct their business and storage inside or under cover, then they only need to certify once every 5 years that they have no

exposure of storm water to industrial materials or activities. This option will be available to all small businesses that will be affected by subch. II of ch. NR 216, Wis. Adm. Code.

II. Summarize the issues raised by small business during the rule hearings, any changes made in the proposed rule as a result of alternatives suggested by small business and the reasons for rejecting any alternatives suggested by small business.

Individuals and the Wisconsin Builders Association commented that currently a construction site may require multiple permits for the same work, some from the state and some from local units of government. In particular they were concerned with the need to get both a s. 30.19, Wis. Stats., grading permit and a stormwater construction site general permit for a small grading project near a navigable stream. They wanted the rule to take care of the overlap.

Response: The Department is evaluating combining the s. 30.19, Wis. Stats., grading permit with the ch. NR 216, Wis. Adm. Code construction site general permit, but this may require a statutory change and cannot be done under this rule revision.

The code does include the option for municipalities to operate an Authorized Local Program (ALP) to confer both the local and state construction permit coverage. This would allow one-stop shopping for these two permits, if the municipality were interested in operating an ALP. One concern business was that a municipality operating an ALP would be allowed 30 calendar days to issue a permit, while the state is currently held to 14 working days.

Response: Municipalities serving on the Technical Advisory Committee were not interested in operating an ALP if they were to be held to a 14 working day time frame for review of affected construction projects. They currently do very thorough reviews, which take more than 14 days to complete. As an incentive, the time frame needed to be longer. They did agree to 30 calendar days as being a reasonable expectation.

III. Identify and describe any reports required by the rule that must be submitted by small business and estimate the cost of their preparation.

For industrial facilities, the only report that must be submitted as part of this rule revision is the certification of “no exposure” by industrial facilities. This is a simple site inspection that the owner or operator can perform and complete in order to obtain exemption from permit requirements. It should take no more than an hour for most facilities, and should require no additional cost.

For construction sites, there will be small businesses in the 1 to 5 acres of land disturbance range that before this rule were not required to apply for coverage under a permit. As part of that coverage they will need to prepare an erosion and sediment control plan and a storm water management plan. They must also complete a Notice of Intent (NOI) form. The NOI is the only “report” that needs to be submitted to the state. The NOI itself is fairly simple to complete but the plans may benefit by the hiring of a professional. While the rule does not require

this, some landowners may decide to hire a consulting firm with the appropriate expertise, particularly for the more complicated sites.

IV. Identify and describe any measures or investments that small business must take to comply with the rule and provide an estimate of the associated cost.

Since the erosion control and storm water management plans are site specific, it is difficult to estimate the costs associated with them. If a consultant is hired, the cost will be greater than if the contractor is responsible for developing an erosion control plan consistent with Department guidance and technical standards. Smaller sites (between 1 and 5 acres of land disturbance) will now need to implement erosion control practices that may cost anywhere from \$300-\$900/acre. For post-construction, the small business will need to set aside a portion of the site to manage storm water. This area may be 1-3% of the project area. Again, this varies with the site conditions. Once constructed, the storm water treatment practices will need to be maintained. Annual operation and maintenance cost may be 5% of the cost of construction of the storm water treatment practice.

V. Identify the additional cost, if any, to the state in administering or enforcing a rule, which includes any methods listed in I. A through E.

The state will be responsible for conferring permit coverage to these small sites and for managing the certification of “no exposure” as required by the federal regulations under Phase II. Since the workload is expected to exceed the current staff capabilities, efforts will be made to streamline the review process by identifying for the applicant the state’s expectations for the site. The proposed rule includes the information on how to assess an industrial site for “no exposure”. The NOI for construction sites will also be modified to better identify the sites most likely to cause a problem for the affected resource and allow the state to prioritize the reviews.

The state is to manage this program with funds from permit fees; commensurate with the level of effort involved in each task. The fee structure for industrial and construction permits has been increased slightly to accommodate resource needs since fees have not been adjusted since 1994. For industrial facilities, the fee increase is less than the rate of inflation over that time period. Currently, Tier 1 permit fees are \$200 annually and Tier 2 industrial permit fees are \$100 annually or no fee for the former Tier 3 (now the “no exposure”) facilities. Small businesses will most likely fall under the “no exposure” or Tier 2 category. The fee structure will increase Tier 1 and Tier 2 industrial fees to \$260 and \$130 respectively. The Department did receive comments about this increase but additional revenue is necessary to meet the program needs.

Construction site permit fees are currently \$200 per application. This will go up to \$235 for sites disturbing 5-24 acres and to \$350 for sites at 25 or more acres of disturbance. There will be a break for smaller construction sites (less than 5 acres) of \$140 per application. Again, small businesses are likely to fall into the category of less than 5 acres.

VI. Describe the impact on public health, safety and welfare, if any, caused by including in the rule any of the methods listed in I. A. through E.

Implementation of the proposed rules will result in improved water quality with subsequent benefits to public health, safety and welfare. No change was made in the rule based on comments from small businesses that will change this.

However, for industrial sites, the inclusion of the “no exposure” certification will depend on the ability of the owner to maintain that site in compliance with the “no exposure” requirement for the 5 years between certifications. The state will only know about lapses through complaints or inspections.